

**FILED**

**DEC 17 2008**

**Board of Vocational Nursing  
and Psychiatric Technicians**

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**BEFORE THE  
DEPARTMENT OF CONSUMER AFFAIRS  
FOR THE BUREAU OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No.VN-2007-960

BENJAMIN JORGE SOTELO  
612 Welland Way  
West Sacramento, CA 95605

**ACCUSATION**

Vocational Nurse License No. VN 175945

Respondent.

Complainant alleges:

**PARTIES**

1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this  
Accusation solely in her official capacity as the Executive Officer of the Bureau of Vocational  
Nursing and Psychiatric Technicians ("Bureau"), Department of Consumer Affairs.

2. On or about February 8, 1996, the Bureau issued Vocational Nurse  
License Number VN 175945 to Benjamin Jorge Sotelo ("Respondent"). Respondent's  
vocational nurse license was in full force and effect at all times relevant to the charges brought  
herein and will expire on October 31, 2009, unless renewed.

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## STATUTORY PROVISIONS

3. Business and Professions Code ("Code") section 2875 provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

4. Code section 118, subdivision (b), provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under Code section 2892.1, the Board may renew an expired license at any time within four years after the expiration.

5. Code section 22, subdivision (a), states:

"Board" as used in any provision of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

6. Code section 2878 states, in pertinent part:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

(a) Unprofessional conduct . . .

....

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction . . .

7. Code section 2878.5 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022.

1 (b) Use any controlled substance as defined in Division 10 of the Health  
2 and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic  
3 beverages, to an extent or in a manner dangerous or injurious to himself or  
4 herself, any other person, or the public, or to the extent that the use impairs his or  
5 her ability to conduct with safety to the public the practice authorized by his or  
6 her license.

7  
8 (c) Be convicted of a criminal offense involving possession of any  
9 narcotic or dangerous drug, or the prescription, consumption, or  
10 self-administration of any of the substances described in subdivisions (a) and (b)  
11 of this section, in which event the record of the conviction is conclusive evidence  
12 thereof . . .

13  
14 8. Code section 2878.6 states:

15 A plea or verdict of guilty or a conviction following a plea of nolo  
16 contendere made to a charge substantially related to the qualifications,  
17 functions and duties of a licensed vocational nurse is deemed to be a conviction  
18 within the meaning of this article. The board may order the license suspended or  
19 revoked, or may decline to issue a license, when the time for appeal has  
20 elapsed, or the judgment of conviction has been affirmed on appeal or when an  
21 order granting probation is made suspending the imposition of sentence,  
22 irrespective of a subsequent order under the provisions of Section 1203.4 of  
23 the Penal Code allowing such person to withdraw his plea of guilty and to enter  
24 a plea of not guilty, or setting aside the verdict of guilty, or dismissing the  
25 accusation, information or indictment.

26 9. Health and Safety Code section 11170 states that no person shall  
27 prescribe, administer, or furnish a controlled substance for himself.

#### 28 Regulatory Provision

10. California Code of Regulations, title 16, section 2521, states:

For the purposes of denial, suspension, or revocation of a license pursuant  
to Division 1.5 (commencing with Section 475) of the Business and Professions  
Code, a crime or act shall be considered to be substantially related to the  
qualifications, functions or duties of a licensed vocational nurse if to a substantial  
degree it evidences present or potential unfitness of a licensed vocational nurse to  
perform the functions authorized by his license in a manner consistent with the  
public health, safety, or welfare. Such crimes or acts shall include but not be  
limited to those involving the following:

. . . .

(f) Any crime or act involving the sale, gift, administration, or furnishing  
of "narcotics or dangerous drugs or dangerous devices" as defined in Section  
4022 of the Business and Professions Code.

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1 of burnt marijuana emitting from the interior of the vehicle, and observed that Respondent's  
2 speech was slow and slurred and his eyes were red and glassy, with a lack of convergence in  
3 Respondent's right eye. Respondent admitted that his driver's license was suspended, that he  
4 smoked a "bowl" (pipe) of marijuana prior to leaving Sacramento and had shared "some hits" of  
5 marijuana with his passenger as they drove to Eureka, and that he had used methamphetamine  
6 three days earlier. The officer determined that Respondent had been driving under the influence  
7 of drugs and was unable to safely operate a motor vehicle. The officer arrested Respondent for  
8 violating Vehicle Code section 23152, subdivision (a), and transported him to the Humboldt  
9 County Sheriff's Sub-Station in Garberville. Respondent underwent a urine test and tested  
10 positive for marijuana and methamphetamine.

#### 11 **SECOND CAUSE FOR DISCIPLINE**

##### 12 **(Self-Administration of Controlled Substances)**

13 15. Respondent is subject to disciplinary action pursuant to Code section  
14 2878, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section  
15 2878.5, subdivision (a), in that in or about November 2006, Respondent self-administered  
16 unknown quantities of marijuana and methamphetamine without lawful authority therefor, as set  
17 forth in paragraph 14 above.

#### 18 **THIRD CAUSE FOR DISCIPLINE**

##### 19 **(Use of Controlled Substances to an Extent or in a Manner**

##### 20 **Dangerous or Injurious to Oneself or Others)**

21 16. Respondent is subject to disciplinary action pursuant to Code section  
22 2878, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section  
23 2878.5, subdivision (b), in that in or about November 2006, Respondent used the controlled  
24 substances marijuana and methamphetamine to an extent or in a manner dangerous or injurious  
25 to himself, others, and the public, as set forth in paragraph 14 above.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Conviction of a Crime Involving Use of**

3 **Alcoholic Beverages and/or Controlled Substances)**


4 17. Respondent is subject to disciplinary action pursuant to Code section  
5 2878, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section  
6 2878.5, subdivision (c), in that on or about March 23, 2007, Respondent was convicted of a  
7 criminal offense involving the use of controlled substances and/or consumption of alcoholic  
8 beverages, as set forth in paragraph 14 above.

9 **PRAYER**

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
11 alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

- 12 1. Revoking or suspending Vocational Nurse License Number VN 175945,  
13 issued to Benjamin Jorge Sotelo;
- 14 2. Ordering Benjamin Jorge Sotelo to pay the Bureau of Vocational Nursing  
15 and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this  
16 case, pursuant to Business and Professions Code section 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.
- 18

19 DATED: December 17, 2008

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22 TERESA BELLO-JONES, J.D., M.S.N., R.N.  
23 Executive Officer  
24 Bureau of Vocational Nursing and Psychiatric Technicians  
25 Department of Consumer Affairs  
26 State of California  
27 Complainant  
28